

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAX RAMON PHILLIPS,

Defendant.

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No. 4:07cr00307 SWW

ORDER

By Memorandum and Order entered April 21, 2008 [doc.#25], this Court found Dax Ramon Phillips, on a charge of attempted bank robbery, not guilty only by reason of insanity. By Order entered April 25, 2008 [doc.#27], this Court directed that pursuant to 18 U.S.C. § 4243(a), Phillips be committed to the custody of the United States Attorney General for placement in a suitable facility and that pursuant to 18 U.S.C. § 4243(b) and § 4247(b) and (c), a psychiatric or psychological examination be conducted and a psychiatric or psychological report prepared and filed with the Court.¹ The Court stated it would hold a commitment hearing within forty (40) days of the entry of the April 21st Memorandum and Order in accordance with 18 U.S.C. § 4243(c) at which Phillips will have the burden of proving by clear and convincing evidence that his release would not pose a substantial risk of bodily injury or serious injury to property. *See* 18 U.S.C. § 4243(d). *See also United States v. LaFrombosie*, 836 F.2d 1149,

¹ The April 25th Order vacated that portion of the April 21st Memorandum and Order that designated the psychologist that had conducted previous examinations of Phillips to conduct the latest examination.

1150-51 (8th Cir. 1988); *United States v. Wallace*, 845 F.2d 1471, 1472 (8th Cir. 1988). The hearing was set for May 21, 2008.

This Court held a telephone conference on May 7, 2008, with the government and counsel for Phillips, Mr. Madison P. Aydelott, III, to discuss logistical matters. During the telephone conference, the Court informed the parties that it had learned that in accordance with this Court's April 25th Order, Phillips would soon be transported to the Federal Medical Center, Butner, North Carolina ("FMC Butner"), for the examination and report, but that he had not yet been so transported. In addition, the Court informed the parties that the Marshal's service had indicated that it would be next to impossible to transport Phillips to this Court from FMC Butner in time for the May 21st commitment hearing.

Desiring the report prior to the hearing, Mr. Aydelott, with the government's consent, waived the requirement that the commitment hearing be held within 40 days of the entry of this Court's April 21st Memorandum and Order and this Court accepted Mr. Aydelott's waiver. The Court stated it would continue the May 21st commitment hearing. In addition, the parties and this Court agreed that the as yet to be scheduled commitment hearing will be conducted by video conference from FMC Butner (if FMC Butner had such capability) to eliminate any possibility that Phillips' medication to treat his schizophrenia, paranoid type, would be disrupted. Mr. Aydelott stated he would travel to FMC Butner for the video conference and the Government stated it would inquire into FMC Butner's video conference capabilities, if any, and report back to the Court and Mr. Aydelott.

IT IS THEREFORE ORDERED that the commitment hearing scheduled for May 21, 2008, be continued, Phillips having waived the requirement that the commitment hearing be held

within 40 days of the entry of this Court's April 21st Memorandum and Order.

IT IS FURTHER ORDERED that Dax Ramon Phillips remain at FMC Butner and not be moved from that facility until further order of the Court.

Dated this 8th day of May 2008.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE